IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9844 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

1 to 5 NO

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ARUB WOODEN INDUSTRY - Petitioner(s)

Versus

REGIONAL MANAGER & 2 - Respondent(s)

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Appearance :
MR PRAKASH K JANI for Petitioner(s) : 1,
MR RAKESH GUPTA with MR KM THAKKAR with MR KB NAIK for M/S TRIVEDI & GUPTA for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.
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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 01/03/2006

ORAL JUDGMENT

1. The petitioner has approached this Court under Article 226 of the Constitution with a prayer to direct the respondent to hand over possession of plot No.14 situated in GIDC Mehsana-II and also to direct the respondent to give to the petitioner the

benefit of installments and reduce the rate of interest. Those prayers are based upon the termination of agreement and rescission of allotment by the respondents being held and declared to be illegal.

2. It is the case of the petitioner that plot No.14 in GIDC, Mehsana-II had come to be allotted to the petitioner and a sum of Rs.1,01,637/-, being 20% of the total price of the plot, was paid after initial deposit of Rs.10,000/- made by him. Thereafter, the plot allotted to the petitioner was not handed over and, by letter dated 19.8.1989, the respondent had called upon the petitioner to take over physical possession of the plot after payment of Rs.1,67,639/- which were shown as arrears on account of due installments, penal interest, service charges etc. Therefore, a grievance is made by the petitioner that, instead of giving physical possession of the plot to the petitioner in the year 1987, the respondent was wrongly demanding subsequent dues and such action of the respondent culminating into termination of the agreement with the petitioner was arbitrary and illegal.

3. By filing an affidavit of the Assistant Manager, the respondent has raised several preliminary and substantive objections, including the objection that the petitioner had suppressed material

facts in the petition, that the petition raised several questions of disputed facts, that the petition was suffering from the vice of delay and laches, that the third party who was subsequently allotted the plot and who were in possession of it were a necessary party, that the petitioner had not approached the Court with clean hands and that the petitioner prayed for enforcement of a contract entered into between the parties. It is also stated that the petitioner was supposed to pay the outstanding dues as agreed between the parties and commence construction and manufacturing activity within the stipulated period as described in the agreement. However, the petitioner had even failed to obtain possession of the plot in question and such action was in contravention of the terms and conditions of the agreement, even as repeated reminders were issued to the petitioner requesting him to act in accordance with the terms of the agreement. Ultimately, after following the necessary procedure and complying with the terms and conditions of the agreement, an order dated 18.6.1990 was passed by the respondent by which allotment of the plot to the petitioner was declared as cancelled and the plot was given to another party on 16.1.1992. It is also submitted on behalf of the respondent that, even during the intervening period of about two years from 18.6.1990 to 16.1.1992, no willingness was shown by the petitioner either to resume possession of the

plot or to clear the outstanding dues. Under the circumstances, the agreement between the parties was terminated by the respondent vide order dated 14.7.1992 giving effect of termination of the agreement from 18.6.1990. The other factual averments made in the petition are denied on behalf of the respondent.

4. It was apparent from perusal of the petition, the affidavit filed on behalf of the respondent and the oral submissions of the learned counsel that the case of the petitioner depended upon the factual assertion that even after initial payment and allotment, physical possession of the plot in question was not handed over to the petitioner. Not only that that averment is denied and disputed by the respondent, but the order dated 27.7.1987 clearly directing the Junior Engineer of the respondent to hand over possession of the plot to the petitioner is not disputed and, according to the endorsement thereon, a copy thereof with a request to obtain possession of the plot is issued to the petitioner. The petitioner clearly appears to have maintained a stoic silence for a period of two years and that was sought to be explained away by the so-called representations at Annexure-J (collectively) which do not appear to have ever been acknowledged by the respondent, nor is there any evidence of service thereof upon the respondent. Therefore, there are

good reasons to believe the say of the respondent that the petitioner had neglected to take over possession of the plot. That inference is fortified by the letter dated 13.11.1990 of the petitioner in which it is stated by the petitioner himself that due to misunderstanding about handing over and taking over possession of the allotted plot, considerable time had passed and, during that period, business had become very slack due to monetary crisis.

5. Thus, in short, not only that the petition is based upon the facts which are disputed but there are reasons to believe that the petitioner had himself failed to abide by the conditions of the agreement and invited and justified rescission of the agreement. In these circumstances, the petition is required to be rejected only on the grounds that it involves questions of facts which are disputed and involves allegations of breach of agreement between the parties. Therefore, the petition under Article 226 of the Constitution is not a proper remedy and no relief as prayed by the petitioner could be granted. Therefore, the petition is rejected and Rule is discharged with no order as to costs.

Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)